

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HARMONY GOLD U.S.A., INC.,

Plaintiff.

V.

HAREBRAINED SCHEMES LLC,
HAREBRAINED HOLDINGS, INC., JORDAN
WEISMAN, PIRANA GAMES INC.,
INMEDIARES PRODUCTIONS, LLC and
DOES 1-10.

Defendants.

Case No. 2:17-cv-00327

ANSWER TO SECOND
AMENDED COMPLAINT

ANSWER

Defendants Harebrained Holdings, Inc., Harebrained Schemes, LLC, and Jordan Weisman (collectively, the “Harebrained Defendants”) answer Plaintiff’s Second Amended Complaint as follows. To the extent that any allegation in the complaint is not specifically admitted, the allegation is denied.

PARTIES

1. Plaintiff Harmony Gold U.S.A., Inc., is a California corporation with its principal place of business in Los Angeles, California.

1 ANSWER: The Harebrained Defendants lack knowledge or information sufficient to
 2 form a belief about the truth of the allegations in this paragraph, and on that basis deny them.
 3

4 2. Defendant Harebrained Schemes LLC is a limited liability company formed
 5 under the laws of the State of Washington with its principal place of business in Kirkland,
 6 Washington.

7 ANSWER: The Harebrained Defendants admit Harebrained Schemes LLC is a
 8 Washington limited liability company with a place of business in Kirkland, Washington. The
 9 Harebrained Defendants deny the allegations of this paragraph that are otherwise inconsistent
 10 with the above admission(s).

11

12 3. Defendant Harebrained Holdings, Inc., is a corporation formed under the laws of
 13 the State of Washington with its principal place of business in Bellevue, Washington. On
 14 information and belief, Harebrained Holdings, Inc., does business under the name Harebrained
 15 Schemes. (Harebrained Schemes LLC and Harebrained Holdings, Inc., are referred to
 16 collectively as “Harebrained Schemes”).

17 ANSWER: The Harebrained Defendants admit Harebrained Holdings Inc. is
 18 incorporated under the laws of the state of Washington with a place of business in Bellevue,
 19 Washington. The Harebrained Defendants deny the remaining allegations in this paragraph.

20

21 4. Defendant Jordan Weisman (“Weisman”) is an individual who, on information
 22 and belief, resides in Bellevue, Washington. On further information and belief, Weisman is the
 23 CEO and registered agent for Harebrained Schemes LLC, and is a governor of Harebrained
 24 Holdings, Inc. Weisman is the moving, active and conscious force behind Harebrained
 25 Schemes; has directed and controlled the activities of Harebrained Schemes complained of
 26 herein; has participated in, assisted in and/or is responsible for the conduct alleged herein; and

1 entered into the Settlement Agreement with Harmony Gold at issue in the breach-of-contract
 2 claim set forth in this Complaint.

3 ANSWER: The Harebrained Defendants admit Jordan Weisman is an individual who
 4 resides in Bellevue, Washington, and that Mr. Weisman is the CEO and registered agent for
 5 Harebrained Schemes LLC. The Harebrained Defendants also admit Mr. Weisman signed a
 6 document entitled “Settlement Agreement and Mutual General Release” on December 10,
 7 1996. The Harebrained Defendants deny the remaining allegations in this paragraph.

8

9 5. Defendant Piranha Games Inc. (“Piranha Games”) is a corporation created under
 10 the laws of British Columbia, Canada, with its principal place of business in Vancouver, British
 11 Columbia, Canada.

12 ANSWER: The Harebrained Defendants lack knowledge or information sufficient to
 13 form a belief about the truth of the allegations in this paragraph, and on that basis deny them.

14

15 6. Defendant InMediaRes Productions, LLC, is a limited liability company formed
 16 under the laws of the State of Washington, with its principal place of business in Lake Stevens,
 17 Washington. On information and belief, InMediaRes Productions, LLC, operates the imprint
 18 game production company Catalyst Game Labs, and hereinafter is referred to as “Catalyst
 19 Game Labs”.

20 ANSWER: The Harebrained Defendants lack knowledge or information sufficient to
 21 form a belief about the truth of the allegations in this paragraph, and on that basis deny them.

22

23 7. On information and belief, Does 1-10 (collectively, the “Doe Defendants”) are
 24 individuals and business entities who have participated or assisted in the conduct alleged herein
 25 or are otherwise responsible therefor. The identities of these Doe Defendants presently are not
 26 and cannot be known to Harmony Gold, but these persons and/or entities will be added as
 27 named defendants to this action as and when they are identified (collectively, Harebrained

1 Schemes LLC, Harebrained Holdings, Inc., Weisman, Piranha Games, Catalyst Game Labs and
 2 the Doe Defendants are referred to herein as “Defendants”).

3 ANSWER: The Harebrained Defendants lack knowledge or information sufficient to
 4 form a belief about the truth of the allegations in this paragraph, and on that basis deny them.

5
 6 **JURISDICTION AND VENUE**

7 8. This Court has jurisdiction because (i) this action arises under the Copyright
 8 Act, 17 U.S.C. § 101 *et seq.*, and jurisdiction is specifically conferred by 28 U.S.C. §§ 1331
 9 and 1338(a); and (ii) this is an action between citizens of different states in which the value of
 10 the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00), exclusive of
 11 interest and costs, jurisdiction being conferred in accordance with 28 U.S.C. § 1332.
 12 Jurisdiction for the Washington State common law claim is conferred in accordance with the
 13 principles of supplemental jurisdiction pursuant to 28 U.S.C. § 1337(a).

14 ANSWER: The allegations in this paragraph are legal conclusions to which no
 15 response is required. To the extent a response is required, the Harebrained Defendants deny the
 16 allegations.

17
 18 9. Venue is proper in this Court under 28 U.S.C. § 1331(b)(1) in that Defendants
 19 Harebrained Schemes LLC, Harebrained Holdings, Inc., Weisman and Catalyst Game Labs
 20 reside in this judicial district. Venue is proper under 28 U.S.C. § 1331(c)(3) in that Defendant
 21 Piranha Games is a foreign resident based in Vancouver, British Columbia, Canada, and on
 22 information and belief there is no other judicial district in which venue would be more
 23 appropriate. Venue is also proper under 28 U.S.C. § 1331(b)(2) as a substantial part of the
 24 events or omissions giving rise to the claims herein occurred in this judicial district.

25 ANSWER: The Harebrained Defendants admit they reside in this judicial district. The
 26 remaining allegations in this paragraph are legal conclusions to which no response is required.

1 To the extent a response is required, the Harebrained Defendants deny the remaining
 2 allegations.

3

4 **FACTS**

5 Harmony Gold and the History of “Robotech”

6 10. This case involves animated giant warrior robots. In or around 1982, Japan-
 7 based Tatsunoko Production Company, Ltd. (“Tatsunoko”), together with Japan-based Big
 8 West and Studio Nue, created a series of original warrior robots and incorporated them into an
 9 animated television series in Japan named “Macross.” Although ownership in various elements
 10 of “Macross” was jointly held by Tatsunoko, Big West, and Studio Nue, by agreement between
 11 the parties, Tatsunoko has always had the exclusive right to license “Macross” internationally,
 12 including all international rights in and to the characters and artwork contained in “Macross.”
 13 Consistent with this agreement, Big West and Studio Nue have never exploited “Macross”
 14 outside of Japan.

15 ANSWER: The Harebrained Defendants admit the Complaint appears to allege claims
 16 involving animated giant warrior robots. The Harebrained Defendants lack knowledge or
 17 information sufficient to form a belief about the truth of the allegations in this paragraph, and
 18 on that basis deny them.

19

20 11. In the early 1980s, Tatsunoko produced two additional animated television
 21 series in Japan that incorporated its futuristic warrior robots — “Mospeada” and “The Southern
 22 Cross”—for which it was also the exclusive owner in Japan.

23 ANSWER: The Harebrained Defendants lack knowledge or information sufficient to
 24 form a belief about the truth of the allegations in this paragraph, and on that basis deny them.

25

26 12. In 1984, Tatsunoko granted entertainment production company Harmony Gold
 27 an exclusive license to adapt the Macross, Mospeada and The Southern Cross series for a

1 television series in the United States, which Harmony Gold named "Robotech." Harmony
 2 Gold's exclusive license to "Macross" expressly included all rights to the artwork, animation,
 3 and characters contained in "Macross" including all rights to exclusively exploit the artwork,
 4 animation, and characters. In 1985, the first of 85 episodes of the Harmony Gold-produced
 5 Robotech animated series aired in the United States. (Hereinafter, all of Harmony Gold's
 6 Macross, Mospeada, The Southern Cross and Robotech shows, characters, products and
 7 derivative works are referred to as "Robotech.") Consistent with its agreement with Tatsunoko,
 8 Harmony Gold obtained a copyright registration in "Macross," including the animation, story,
 9 and soundtrack, in all 36 episodes of the series (PAu 740,323; March 28, 1985 registration
 10 date).

11 ANSWER: The Harebrained Defendants lack knowledge or information sufficient to
 12 form a belief about the truth of the allegations in this paragraph, and on that basis deny them.
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14 13. Tatsunoko also granted Harmony Gold an exclusive license to market in the
 15 United States all merchandise incorporating Robotech warrior robots, such as books, toys,
 16 video games, films, comic books and apparel. Harmony Gold possesses this exclusive license
 17 to this day.

18 ANSWER: The Harebrained Defendants lack knowledge or information sufficient to
 19 form a belief about the truth of the allegations in this paragraph, and on that basis deny them.
 20

21 14. In 1991, Tatsunoko and Harmony Gold renewed Harmony Gold's exclusive
 22 license for Macross, Mospeada, and The Southern Cross, including Harmony Gold's exclusive
 23 license in and to the "Macross" artwork, animation, characters, and merchandising rights in the
 24 United States, and through a series of operative amendments, this license remains valid today.

25 ANSWER: The Harebrained Defendants lack knowledge or information sufficient to
 26 form a belief about the truth of the allegations in this paragraph, and on that basis deny them.
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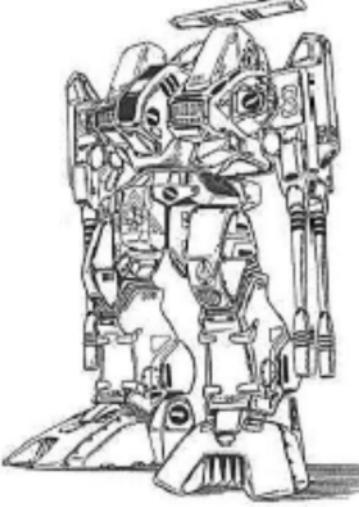
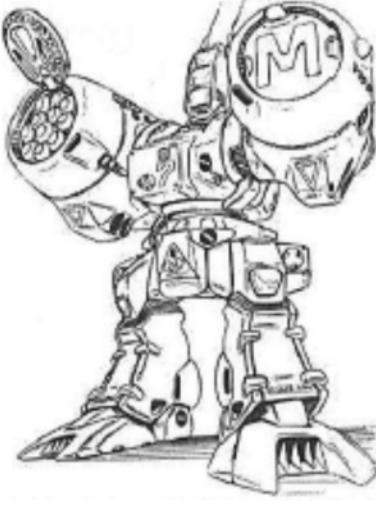
1
2 15. Harmony Gold and Tatsunoko are owners of a large portfolio of United States
3 Copyright Registrations for animated programs, books, comic books and other materials
4 incorporating images of the Robotech warrior robots, including, without limitation, the
5 following:

- 6 • “Macross: Booby Trap” (PA 252,486); February 7, 1985 registration date
- 7 • “Mospeada” (PAu 740,321); March 28, 1985 registration date
- 8 • “Southern Cross” (PAu 740,322); March 28, 1985 registration date
- 9 • “Macross” (PAu 740,323); March 28, 1985 registration date
- 10 • “Robotech” (PA 260,432); August 22, 1985 registration date
- 11 • “Robotech II: The Sentinels” (PA 370,656); August 11, 1987 registration date
- 12 • “Robotech II: The Sentinels; Episodes 1, 2 and 3” (PAu 1,117,191); August 11,
13 1987 registration date
- 14 • “Robotech 3000” (PAu 2,415,945); May 26, 1999 registration date.

15 The certificates for these registrations are attached as Exhibit A.

16 ANSWER: The Harebrained Defendants admit there are documents attached as Exhibit
17 A to the complaint that appear to be copies of copyright registrations. The Harebrained
18 Defendants lack knowledge or information sufficient to form a belief about the truth of the
19 remaining allegations in this paragraph, and on that basis deny them.

20
21 16. The warrior robots depicted in the Robotech copyright registrations owned by
22 Harmony Gold include, but are not limited to, the following:

Robotech Warrior Robot Name	Robotech Warrior Robot Image
1 2 3 4 5 Armored Valkyrie 6 7 8 9	
10 11 12 13 14 Destroid Defender 15 16 17 18	
19 20 21 22 23 Destroid Phalanx 24 25 26 27	

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Destroid Spartan



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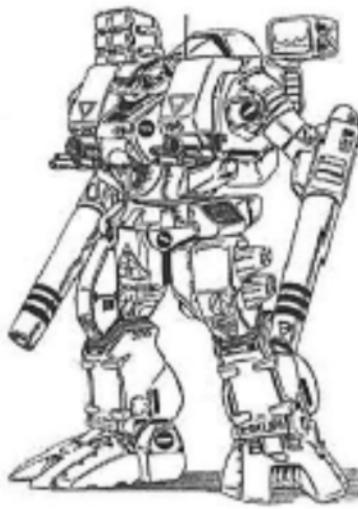
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Destroid Tomahawk



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Officer's Pod (Glaug)



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Super Valkyrie



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Valkyrie VF-1A



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Valkyrie VF-1S



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ANSWER: The Harebrained Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis deny them.

Japanese Litigation Between Big West and Tatsunoko

17. In the early 2000s, Big West and Studio Nue on the one hand, and Tatsunoko, on the other hand, underwent a series of litigations in Japan to determine—as between these parties—who owned what rights in and to “Macross.”

ANSWER: The Harebrained Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis deny them.

18. While the Japanese court decisions limited Tatsunoko's right to make derivative works based on the "Macross" characters, they confirmed that Tatsunoko owned the copyright in the "Macross" series to the exclusion of Big West and Studio Nue, and that Tatsunoko owned the exclusive right to license "Macross" internationally, thereby validating Tatsunoko's exclusive license of the "Macross" copyright and related international rights to Harmony Gold.

ANSWER: The Harebrained Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis deny them.

19. Harmony Gold is informed, and believes, that Tatsunoko's exclusive right to license the works internationally was subsequently confirmed by agreement between Tatsunoko and Big West.

ANSWER: The Harebrained Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis deny them.

20. As a result of the litigation between Tatsunoko and Big West, Tatsunoko and Harmony Gold amended their license agreement, first in 1998 and then again in 2003, to remove Harmony Gold's exclusive right to make derivative films or television works based on

1 the “Macross” character images, which include the Robotech warrior robots. However,
 2 Harmony Gold continues to have the exclusive right to make copies of, distribute, publicly
 3 perform, display, and merchandize the “Macross” character images, including the Robotech
 4 warrior robots, in the United States, with full rights to enforce each and all of its exclusive
 5 rights.

6 ANSWER: The Harebrained Defendants lack knowledge or information sufficient to
 7 form a belief about the truth of the allegations in this paragraph, and on that basis deny them.
 8

9 Harmony Gold’s Prior Litigation Against Weisman

10 21. In 1995, Harmony Gold filed a copyright infringement and unfair competition
 11 complaint against FASA Corporation, which was owned by Weisman, and Virtual World
 12 Entertainment for infringement of the Robotech copyrights by the warrior robot designs in the
 13 defendants’ “BattleTech” virtual reality computer games, role playing games, merchandise and
 14 a planned animated television series and toy line.

15 ANSWER: The Harebrained Defendants admit Harmony Gold USA, Inc. filed suit
 16 against FASA Corporation in or around 1995 alleging copyright infringement. The
 17 Harebrained Defendants presently lack knowledge or information sufficient to form a belief
 18 about the truth of the remaining allegations in this paragraph, and on that basis denies them.
 19

20 22. This prior litigation concluded when the parties agreed to a “Settlement
 21 Agreement and Mutual General Release” (the “Settlement Agreement”), which had an effective
 22 date of December 19, 1996, and to which Weisman was a signatory. In addition to agreeing to
 23 a monetary payment, Weisman and his co-defendants agreed that they would not “make any
 24 use, and will not authorize [their] licensees to make any use, of the visual design images of the
 25 twelve (12) Battlemechs listed below except as provided in this agreement.” These 12
 26 “Battlemechs” include those detailed below in Paragraph 28, which presents side-by-side
 27 comparisons of Harebrained Schemes’ and Weisman’s current warrior robot designs and the

1 corresponding Harmony Gold Robotech designs. Weisman also agreed to the entry of a
 2 permanent injunction and acknowledged that violating the use restriction would cause
 3 Harmony Gold “irreparable harm.” Further, Weisman agreed that he would not “contest, nor
 4 [would he] assist any other person or entity in contesting, Harmony Gold’s exclusive ownership
 5 worldwide, excluding Japan,” of the Robotech merchandising rights. This Settlement
 6 Agreement is confidential, and therefore has not been attached to this Complaint.

7 ANSWER: The Harebrained Defendants admit Mr. Weisman signed a document
 8 entitled “Settlement Agreement and Mutual General Release” on December 10, 1996. To the
 9 extent the remainder of the paragraph purports to interpret and give legal effect to that
 10 document, such allegations are legal conclusions to which no response is required. To the
 11 extent a response is required, the Harebrained Defendants deny the remaining allegations.

12

13 Current Unauthorized Copying by Defendant Piranha Games

14 23. Defendant video game production company Piranha Games developed and
 15 distributes an online game named “MechWarrior Online” incorporating warrior robots, which it
 16 calls “A BattleTech Game.” In April 2013, Piranha Games submitted a proposed design to
 17 Harmony Gold for an animated warrior robot for use in MechWarrior Online to get an opinion
 18 from Harmony Gold if this new design infringed Harmony Gold’s Robotech copyrights.
 19 Harmony Gold determined that Piranha Games’ design unlawfully copied its copyrighted
 20 Destroid Tomahawk warrior robot, and Harmony Gold’s outside counsel sent an e-mail to
 21 Piranha Games’ founder and president Russ Bullock informing him of that decision. On
 22 information and belief, Piranha Games never used this proposed 2013 design.

1 ANSWER: The Harebrained Defendants admit Piranha Games is a video game
 2 production company that developed and distributes an online game named “MechWarrior
 3 Online,” a game which incorporates warrior robots and is referred to as “A BattleTech Game.”
 4 The Harebrained Defendants lack knowledge or information sufficient to form a belief about
 5 the truth of the remaining allegations in this paragraph, and on that basis deny them.

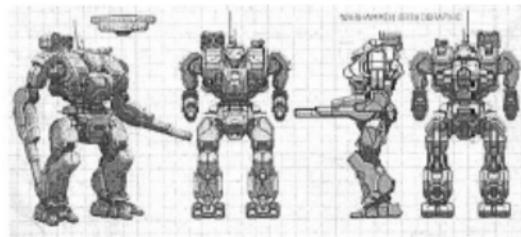
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7 24. In May 2013, Mr. Bullock sent another proposed design for a MechWarrior
 8 Online warrior robot to Harmony Gold’s counsel. Harmony Gold determined that Piranha
 9 Games’ new design unlawfully copied Harmony Gold’s copyrighted Zentraeai OBP warrior
 10 robot, and therefore infringed Harmony Gold’s registered copyrights. Harmony Gold’s counsel
 11 again informed Mr. Bullock of that determination via e-mail. On information and belief,
 12 Piranha Games never used this other proposed 2013 design.

13 ANSWER: The Harebrained Defendants lack knowledge or information sufficient to
 14 form a belief about the truth of the allegations in this paragraph, and on that basis deny them.

15

16 25. In July 2016, Harmony Gold discovered infringing images that unlawfully
 17 copied works of its Destroid Tomahawk warrior robot featured on the website of Catalyst
 18 Game Labs, a purveyor of board games. A blog post from Catalyst Game Labs reads, “It’s
 19 been an absolute blast working with [sic] Matt Newman, Russ Bullock (and of course their
 20 whole great team) generating these lore vignettes.” The following image of the infringing
 21 robot warriors appeared on the blog post by Catalyst:

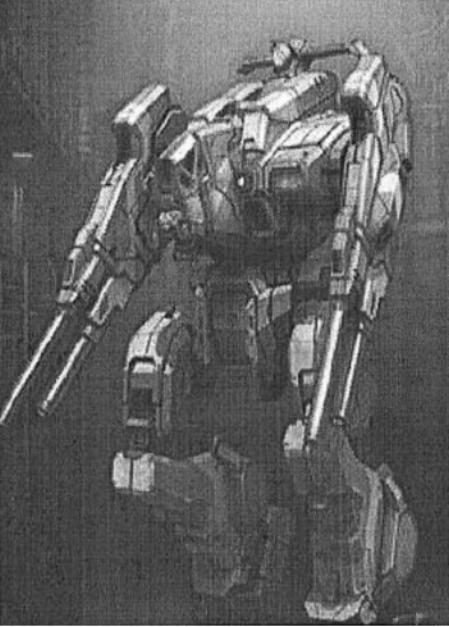
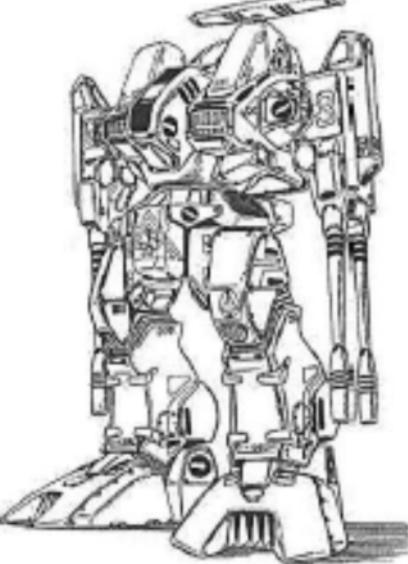
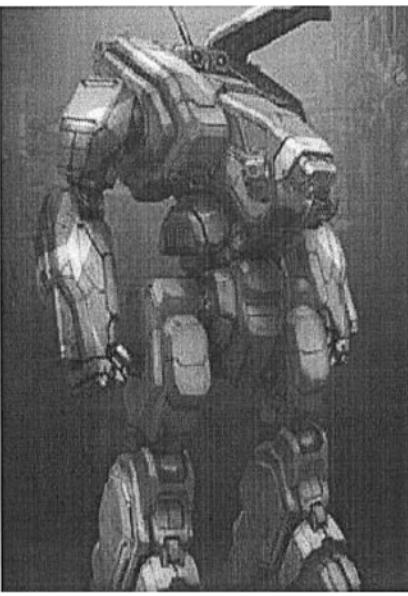


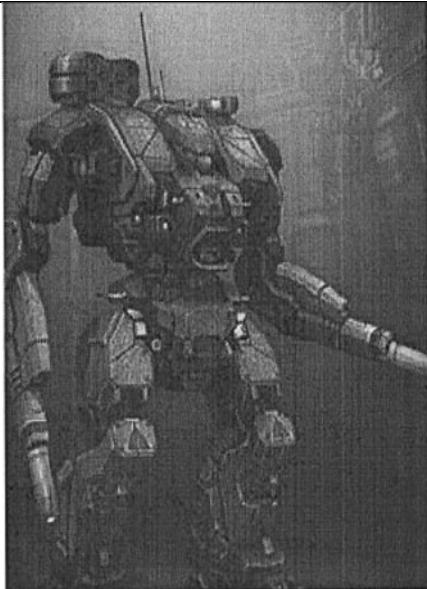
1 ANSWER: The Harebrained Defendants lack knowledge or information sufficient to
 2 form a belief about the truth of the allegations in this paragraph, and on that basis deny them.
 3

4 26. Harmony Gold's counsel immediately e-mailed Mr. Bullock regarding this
 5 infringement, and in his response Mr. Bullock admitted that Piranha Games had developed
 6 these warrior robot designs, and that Catalyst Game Labs created fan fiction around these
 7 designs. He also wrote: "At Piranha we make no claim to any use or legal right to the Robotech
 8 Macross designs that are owned by Harmony Gold."

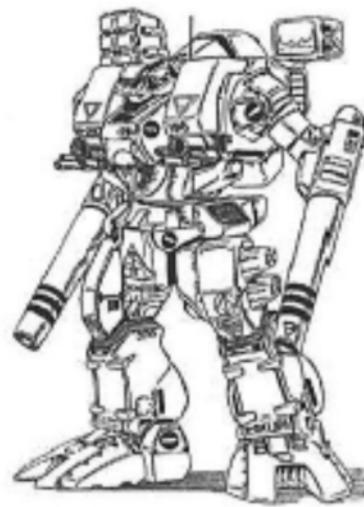
9 ANSWER: The Harebrained Defendants lack knowledge or information sufficient to
 10 form a belief about the truth of the allegations in this paragraph, and on that basis deny them.
 11

12 27. Despite Mr. Bullock's admission that Piranha Games does not have the right to
 13 use Harmony Gold's copyrighted Robotech designs, Piranha Games is doing exactly that
 14 without Harmony Gold's permission. Piranha Games operates a website for its MechWarrior
 15 Online game at www.mwomercs.com. On this site, Piranha Games displays the following
 16 images of robot warriors that infringe Harmony Gold's copyrights and that appear to be used in
 17 the MechWarrior Online game:
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Piranha Games' Infringing Image	Harmony Gold's Copyrighted Image
 (Rifleman)	 Destroid Defender
 (Archer)	 Destroid Spartan



10 (Warhammer)



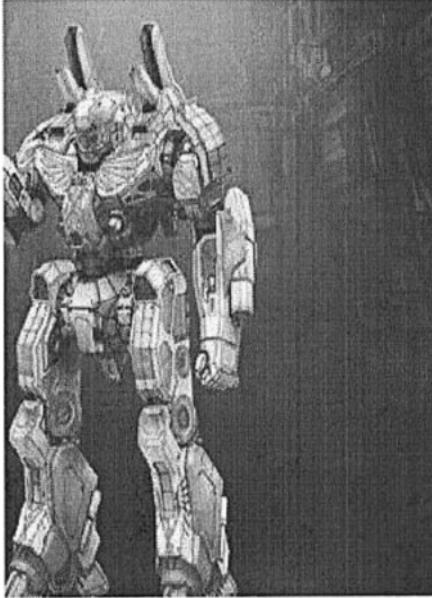
Destroid Tomahawk



20 (Marauder/Marauder IIC)



21 Officer's Pod (Glaug)



10 (Phoenix Hawk)



11 Super Valkyrie

12 ANSWER: The Harebrained Defendants lack knowledge or information sufficient to
 13 form a belief about the truth of the allegations in this paragraph, and on that basis deny them.

14 28. On October 3, 2016, Harmony Gold's counsel sent a letter to Mr. Bullock and
 15 Weisman (as MechWarrior Online is branded as "A BattleTech Game"), demanding that this
 16 infringement stop, and demanding that Mr. Bullock and Weisman disclose the relationship
 17 between Piranha Games and Harebrained Schemes for the creation of MechWarrior Online.
 18 Piranha Games retained U.S. counsel and denied that the robot warriors in MechWarrior Online
 19 infringe Harmony Gold's copyrights.

20 ANSWER: The Harebrained Defendants admit Harmony Gold's counsel sent a letter to
 21 Mr. Weisman on or around October 3, 2016. That letter speaks for itself, and the Harebrained
 22 Defendants deny the allegations in this paragraph to the extent they solely characterize or
 23 purport to describe the contents of that letter. The Harebrained Defendants lack knowledge or
 24 information sufficient to form a belief about the truth of the allegations in this paragraph, and
 25 on that basis deny them.

1 29. To this date, Piranha Games' infringement continues.

2 ANSWER: The Harebrained Defendants lack knowledge or information sufficient to
3 form a belief about the truth of the allegations in this paragraph, and on that basis deny them.

4

5 Current Unauthorized Copying by Defendants Harebrained Schemes and Weisman

6 30. Defendant video game production studio Harebrained Schemes is in the process
7 of developing a new PC video game named "BattleTech." The BattleTech website at
8 www.battletcchgame.com reads, "Jordan Weisman, the creator of BattleTech and
9 MechWarrior, is back with the first turn-based BattleTech game for PC in over two decades.
10 BATTLETECH will feature modern turn-based combat, PVP multiplayer, and a story-driven,
11 Mercenaries-style campaign set in the 3025 era of the BattleTech universe."

12 ANSWER: The Harebrained Defendants admit Harebrained Schemes is developing a
13 PC video game, and that the website at www.battletechgame.com contains certain statements
14 about Mr. Weisman and the game. Those statements speak for itself. The Harebrained
15 Defendants deny the allegations of this paragraph that are otherwise inconsistent with the above
16 admissions.

17

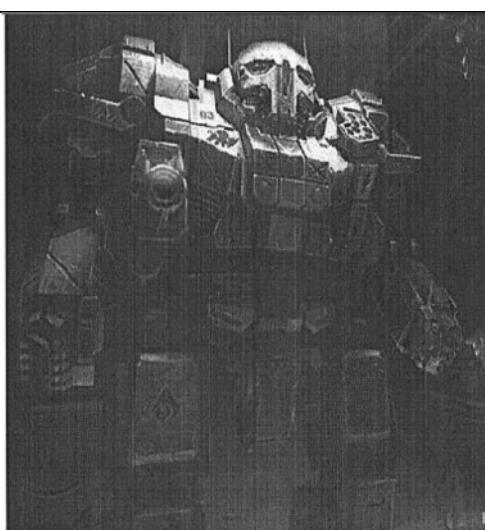
18 31. Harebrained Schemes held two crowdfunding campaigns for its BattleTech
19 game. As of February 28, 2017, its Kickstarter campaign had raised \$2,785,537.13 from 41,733
20 backers, and its BackerKit campaign had raised \$433,058.95 from 49,404 backers.

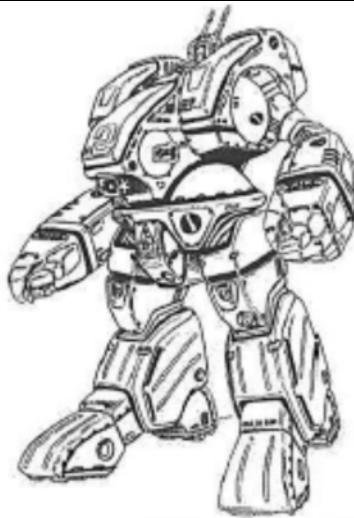
21 ANSWER: The Harebrained Defendants admit Harebrained Schemes held several
22 crowdfunding campaigns for its BattleTech game. The Harebrained Defendants lack
23 knowledge or information sufficient to form a belief about the truth of the remaining
24 allegations in this paragraph, and on that basis deny them.

25

26 32. On its websites at www.harebrained-schemes.com and
27 www.battletechgame.com, Harebrained Schemes displays the following images of robot

1 warriors that infringe Harmony Gold's copyrights. On information and belief, these are
 2 depictions of the warrior robots that will be featured in the upcoming BattleTech video game:

3 Harebrained Schemes' Infringing Image	Harmony Gold's Original Image
	
	



Destroid Spartan

ANSWER: The Harebrained Defendants admit Harebrained Schemes operates www.harebrained-schemes.com and www.battletechgame.com. The Harebrained Defendants deny that any of the images purported in this paragraph to be displayed by Harebrained Schemes on certain websites infringe any valid, existing copyright of Harmony Gold. The Harebrained Defendants deny the remaining allegations in this paragraph.

33. Joe DiNunzio, Chief Financial Officer for Harebrained Holdings, Inc., responded on November 7, 2016, to the October 3, 2016, letter from Harmony Gold's counsel described above in Paragraph 24. In that letter, he claimed that, "Our use of these designs and images is solely through licenses we have obtained from Piranha Games. Our relationship with Piranha Games is solely as a licensee of certain intellectual property."

ANSWER: The Harebrained Defendants admit that on or around November 7, 2016, Joe DiNunzio wrote a letter to Harmony Gold's counsel. That letter speaks for itself. The Harebrained Defendants deny the allegations of this paragraph that are otherwise inconsistent with the above admissions.

34. Subsequently, on November 18, 2016, counsel for Weisman and Harebrained Schemes responded to the October 3 letter from Harmony Gold's counsel as follows:

HBS entered into a license agreement with Piranha Games to license certain content for use in a HBS game. We have certain confidentiality obligations with respect to the license agreement so we cannot comment as to specific details. However, we can say that the license agreement makes general commitments about Piranha's rights in the licensed materials provided to HBS, but that the parties did not specifically address the ownership of the 2016 designs.

ANSWER: The Harebrained Defendants admit that on or around November 18, 2016, counsel for Harebrained Schemes and Mr. Weisman wrote a letter to Harmony Gold's counsel. That letter speaks for itself. The Harebrained Defendants deny the allegations of this paragraph that are otherwise inconsistent with the above admissions.

35. To this date, Harebrained Schemes' and Weisman's infringement continues.

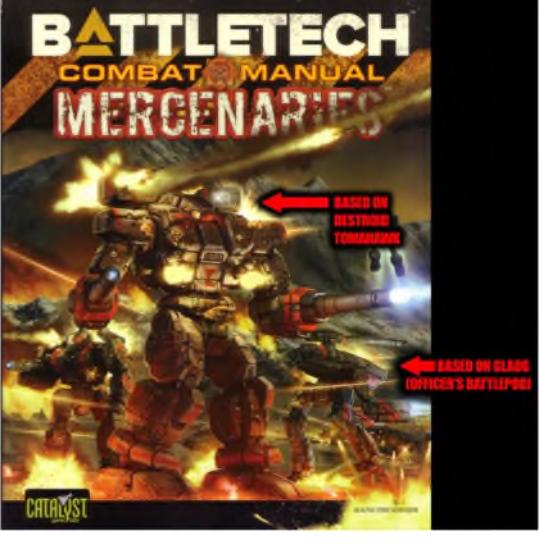
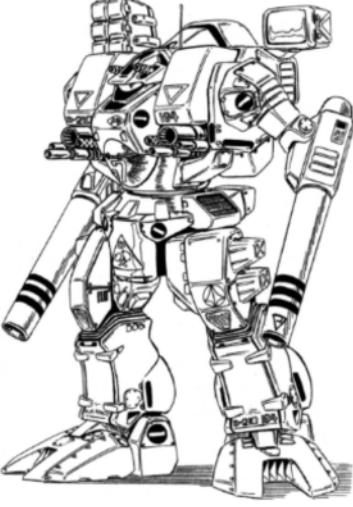
ANSWER: The Harebrained Defendants deny the allegations in this paragraph.

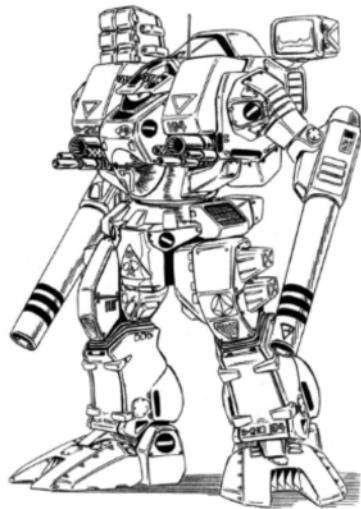
Current Unauthorized Copying By Defendant Catalyst Game Labs

36. Catalyst Game Labs produces a board game and roleplaying game named "BattleTech."

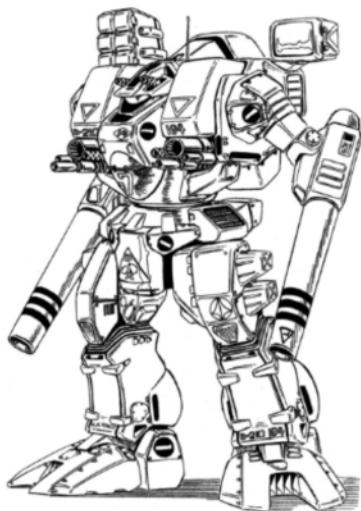
ANSWER: The Harebrained Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis deny them.

37. For its BattleTech game, Catalyst Game Labs develops, releases, distributes and sells sourcebooks to create new playing scenarios for players of the game. In 2016, Catalyst Game Labs released a BattleTech sourcebook named “Combat Manual: Mercenaries.” This sourcebook contains numerous images of robot warriors that infringe Harmony Gold’s copyrights, including the following:

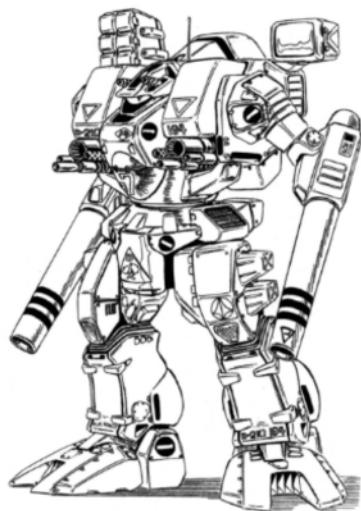
1 2 3 4 5 6 7 8 9 10	Catalyst Game Labs' Infringing Image in Combat Manual: Mercenaries	Harmony Gold's Copyrighted Image
		
		



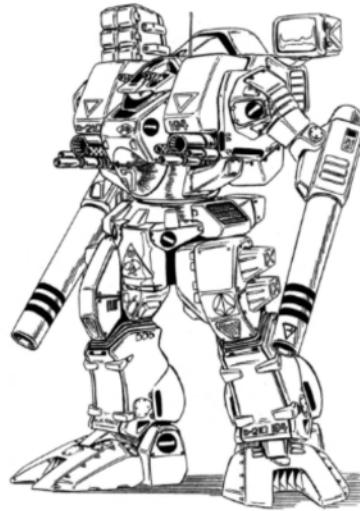
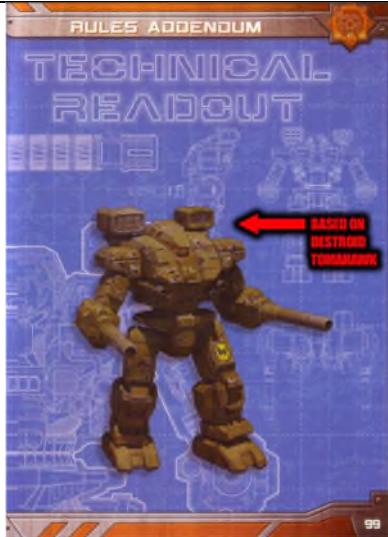
(Destroid Tomahawk)



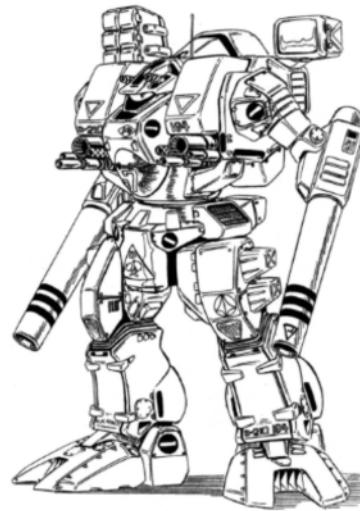
(Destroid Tomahawk)



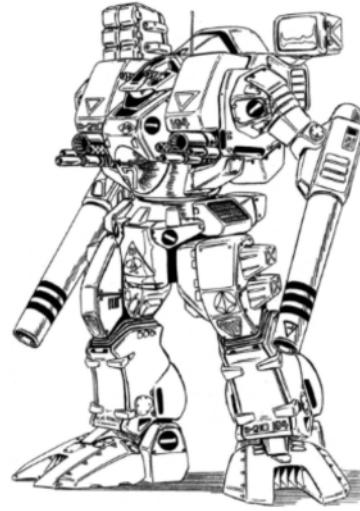
(Destroid Tomahawk)



(Destroid Tomahawk)



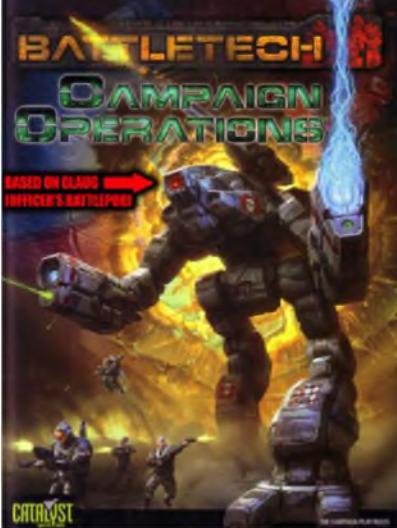
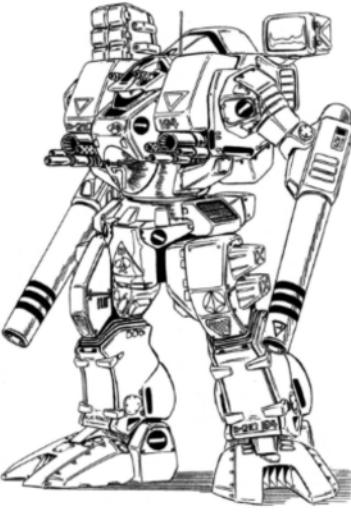
(Destroid Tomahawk)

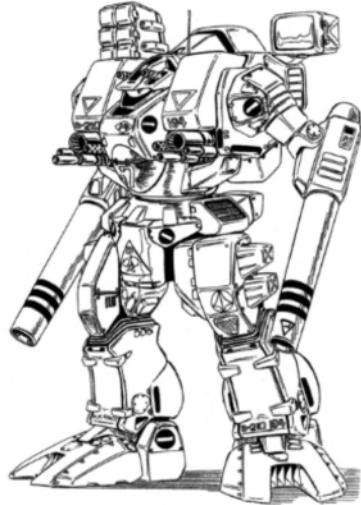


(Destroid Tomahawk)

1 **ANSWER:** The Harebrained Defendants lack knowledge or information sufficient to
 2 form a belief about the truth of the allegations in this paragraph, and on that basis deny them.
 3

4 38. Catalyst Game Labs also develops, releases, distributes and sells new rule books
 5 for its BattleTech game. In 2016, it released a new rule book named “BattleTech: Campaign
 6 Operations.” This rule book contains several images of robot warriors that infringe Harmony
 7 Gold’s copyrights, including the following:

Catalyst Game Labs’ Infringing Image in BattleTech Manual: Campaign Operations	Harmony Gold’s Copyrighted Image
	 <p>(Officer's Pod/Glaug)</p>
	 <p>(Destroid Tomahawk)</p>



(Destroid Tomahawk)



(Destroid Spartan)

ANSWER: The Harebrained Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis deny them.

**COUNT I
COPYRIGHT INFRINGEMENT — ALL DEFENDANTS**

39. Harmony Gold repeats and realleges the allegations contained in Paragraphs 1 through 34 as if fully set forth herein.

1 ANSWER: The Harebrained Defendants repeats and incorporates by references each of
 2 its above responses to those paragraphs.

3

4 40. Harmony Gold owns the copyrights to numerous Robotech warrior robots,
 5 including those identified above.

6 ANSWER: The Harebrained Defendants lack knowledge or information sufficient to
 7 form a belief about the truth of the allegations in this paragraph, and on that basis deny them.

8

9 41. Defendants have infringed Harmony Gold's copyrights to these warrior robots
 10 through their unauthorized copying, distribution and display of warrior robots that are
 11 substantially similar to those owned by Harmony Gold, and that infringe upon Harmony Gold's
 12 exclusive rights to reproduce, distribute, display, and merchandise the Robotech warrior robots
 13 owned by Harmony Gold.

14 ANSWER: The Harebrained Defendants deny the allegations in this paragraph as they
 15 pertain to the Harebrained Defendants. The Harebrained Defendants lack knowledge or
 16 information sufficient to form a belief about the truth of the remaining allegations in this
 17 paragraph, and on that basis deny them.

18

19 42. Defendants had access to Harmony Gold's copyrighted Robotech images prior
 20 to Defendants' unauthorized and infringing uses of the images.

21 ANSWER: The Harebrained Defendants deny the allegations in this paragraph as they
 22 pertain to the Harebrained Defendants. The Harebrained Defendants lack knowledge or
 23 information sufficient to form a belief about the truth of the remaining allegations in this
 24 paragraph, and on that basis deny them.

25

26 43. Defendants' actions have irreparably damaged and, unless enjoined, will
 27 continue to irreparably damage Harmony Gold. Harmony Gold has no adequate remedy at law

1 for these wrongs and injuries. Harmony Gold is, therefore, entitled to a preliminary and
 2 permanent injunction restraining and enjoining Defendants and their agents, servants,
 3 employees, attorneys and all persons acting in concert with them from infringing Harmony
 4 Gold's copyrights.

5 ANSWER: The allegations in this paragraph are legal conclusions to which no
 6 response is required. To the extent a response is required, the Harebrained Defendants deny the
 7 allegations in this paragraph as they pertain to the Harebrained Defendants. The Harebrained
 8 Defendants lack knowledge or information sufficient to form a belief about the truth of the
 9 remaining allegations in this paragraph, and on that basis deny them.

10

11 44. Defendants have infringed Harmony Gold's copyrights willfully.

12 ANSWER: The Harebrained Defendants deny the allegations in this paragraph as they
 13 pertain to the Harebrained Defendants. The Harebrained Defendants lack knowledge or
 14 information sufficient to form a belief about the truth of the remaining allegations in this
 15 paragraph, and on that basis deny them.

16

17 45. Harmony Gold is entitled to recover damages sustained from Defendants'
 18 unlawful conduct, including Defendants' profits; Harmony Gold's damages; or, alternatively, at
 19 Harmony Gold's election, statutory damages.

20 ANSWER: The allegations in this paragraph are legal conclusions to which no
 21 response is required. To the extent a response is required, the Harebrained Defendants deny the
 22 allegations in this paragraph as they pertain to the Harebrained Defendants. The Harebrained
 23 Defendants lack knowledge or information sufficient to form a belief about the truth of the
 24 remaining allegations in this paragraph, and on that basis deny them.

25

26

27

1

COUNT II
(BREACH OF CONTRACT AGAINST WEISMAN AND
HAREBRAINED SCHEMES)

2

3 46. Harmony Gold repeats and realleges the allegations contained in Paragraphs 1
 through 34 as if fully set forth herein.

4

5 ANSWER: The Harebrained Defendants repeats and incorporates by references each of
 its above responses to those paragraphs.

6

7 47. Harmony Gold and Weisman entered into a contract (i.e., the Settlement
 Agreement) in December 1996, which is still valid and in effect today. The Settlement
 Agreement prohibits Weisman from using colorable imitations of certain Robotech warrior
 robots owned by Harmony Gold, including making works substantially similar to, or making
 derivative works of, these warrior robots.

8

9 ANSWER: The Harebrained Defendants admit Mr. Weisman signed a document
 10 entitled “Settlement Agreement and Mutual General Release” on December 10, 1996. To the
 11 extent the remainder of the paragraph purports to interpret and give legal effect to that
 12 document, such allegations are legal conclusions to which no response is required. To the
 13 extent a response is required, the Harebrained Defendants deny the remaining allegations.

14

15 48. As shown in Paragraphs 30-35 above, Weisman, through and with Harebrained
 16 Schemes, has created and announced plans to copy, display and distribute warrior robots that
 17 are substantially similar to, unauthorized derivative works of, Harmony Gold’s Robotech
 18 warrior robots which Weisman agreed in the Settlement Agreement not to use. Therefore,
 19 under the law of the State of Washington, Weisman and Harebrained Schemes have breached
 20 the Settlement Agreement.

21

22 ANSWER: The Harebrained Defendants deny the allegations in this paragraph.

23

49. As a result of this breach of the Settlement Agreement through Weisman's own actions and those of his company Harebrained Schemes, Harmony Gold has suffered and is suffering monetary damages in an amount to be determined at trial.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, the Harebrained Defendants deny the allegations in this paragraph.

AFFIRMATIVE DEFENSES

The Harebrained Defendants assert the following defenses to Plaintiff's claims. By setting forth these affirmative defenses, the Harebrained Defendants do not assume any burden of proof as to any fact issue or other element of any cause of action that properly belongs to Plaintiff. The Harebrained Defendants reserve the right to amend or supplement their affirmative defenses.

1. Plaintiff's claims fail to state a claim upon which relief may be granted.

2. Plaintiff's claims are barred, in whole or in part, because Plaintiff's copyrights are invalid and/or unenforceable, including by reason of lack of originality and lack of copyrightable subject matter.

3. Plaintiff's claims are barred, in whole or in part, because the alleged violations of copyrights by the Harebrained Defendants are *de minimis*, nominative, and/or fair uses permitted under law.

4. Plaintiff's claims are barred, in whole or in part, because the Harebrained Defendants' conduct was in good faith and with non-willful intent, at all times.

5. Plaintiff's claims are barred, in whole or in part, because critical parts or portions of Plaintiff's alleged protected copyrights are invalid due to consisting of unprotectable scenes a faire.

6. Plaintiff's claims are barred, in whole or in part, because Plaintiff does not own some or all of the works of authorship that form the subject of the claims for relief.

7. Plaintiff's claims are barred, in whole or in part, because some or all of the works of authorship that form the subject of the claims for relief are not original to Plaintiff and, therefore, Plaintiff lacks standing to pursue these claims.

8. The occurrences referred to in Plaintiff's Complaint and all damages, if any, resulting therefrom were caused by the acts or omissions by third parties over whom the Harebrained Defendant had no control.

PRAYER FOR RELIEF

The Harebrained Defendants respectfully request that the Court (a) dismiss Plaintiff's claims with prejudice; (b) deny all relief requested by Plaintiff; (c) award the Harebrained Defendants their reasonable attorneys' fees and costs in defending this action; and (d) grant such other and further relief as may be just and proper.

DATED this 26th day of February, 2018.

DAVIS WRIGHT TREMAINE LLP
Attorneys for the *Harebrained Defendants*

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jamescorning@dwt.com

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the United States that on the date below, I caused the foregoing document to be filed in CM/ECF, which will send a copy to all counsel of record.

DATED: February 26, 2018

s/ James Harlan Corning
James Harlan Corning